

No. 22-7783

IN THE SUPREME COURT OF THE UNITED STATES

PINKNEY CLOWERS, III, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

IN THE SUPREME COURT OF THE UNITED STATES

No. 22-7783

PINKNEY CLOWERS, III, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends (Pet. 21-31) that the lower courts erred in treating a prior judicial finding of drug quantity as binding in denying his motion for a sentence reduction pursuant to Section 404 of the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5222. For the reasons set forth in the government's brief in opposition in Harper v. United States, No. 23-27 (filed Nov. 9, 2023), the government agrees with petitioner that when authorizing district courts to "impose a reduced sentence," § 404(b), 132 Stat. 5222, Congress envisioned that courts would do so in a manner consistent with Appendi v. New Jersey, 530 U.S. 466 (2000), which allows an increase in a defendant's statutory sentencing range

only when a jury has found the conditions for that increase (other than the fact of a prior conviction) beyond a reasonable doubt.¹

As further explained in that brief, however, that issue does not warrant this Court's review. See Harper Br. in Opp. at 12-14. Petitioner identifies no other court of appeals that has adopted the Eleventh Circuit's outlier interpretation; the circuit conflict on the question presented is lopsided and of limited practical significance; and the question presented is of declining prospective importance, in light of the diminishing set of potential Section 404 movants whose motions would implicate it. See ibid.

The petition for a writ of certiorari should be denied.²

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General

NOVEMBER 2023

¹ The government has served petitioner with a copy of the government's brief in opposition in Harper.

² The government waives any further response to the petition unless this Court requests otherwise.